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M. Shapiro
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
In Re:
Chapter 11
LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al., (Jointly Administered)
Debtors.

-----X
* * *HIGHLY CONFIDENTIAL* * *
DEPOSITION OF MARK J. SHAPIRO
New York, New York
August 7, 2009

Reported by:
KATHY S. KLEPFER, RMR, RPR, CRR, CLR
JOB NO. 24036

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2 August 7, 2009

3 9:30 a.m.

4
5 HIGHLY CONFIDENTIAL deposition
6 of MARK J. SHAPIRO, held at Jones
7 Day, LLP, 222 East 41st Street, LLP,
8 New York, New York, before Kathy S.
9 Klepfer, a Registered Professional
10 Reporter, Registered Merit Reporter,
11 Certified Realtime Reporter, Certified
12 Livenote Reporter, and Notary Public
13 of the State of New York.
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2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
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7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q. By whom are you presently employed?

15 A. Barclays Capital.

16 Q. And what's your position there?

17 A. I am the head of Restructuring and
18 Finance within the Investment Banking Division.

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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Q. Was Steve Berkenfeld involved in the negotiations on that Monday and Tuesday?

22

A. Yes.

23

24

Q. Would he have been one of the people negotiating what you call in the trenches?

25

A. He was more involved in some of the

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2 legal negotiations. He was definitely at the
3 table from time to time with the lawyers. He
4 was not, to the best of my recollection, in the
5 meetings that took place between myself, Mark
6 Shafir, Archie and Michael Klein.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

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25 [REDACTED]

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4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Q. And how did you go about trying to
10 identify what I'll call the quantum? How big is
11 this number?

12 A. So I think I first asked George Mack,
13 again, as part of this, to figure out like what
14 were the outstandings that were unpaid under
15 these contracts. And I think he went to
16 somebody and the answer came back we can't
17 possibly figure that out in this time
18 specifically to each contract. It was just, you
19 know, there was no ability, functionally, to do
20 that in the time we had. That's just not -- I
21 was not humanly possible.

22 So but Barclays obviously wanted that
23 information from us, so we started thinking
24 about, well, how could we approximate that
25 amount. And so a group of us, we were talking

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2 about it on the Lehman side, and we said, well,
3 one way that we could estimate this was by
4 having somebody look at the payables run, the
5 normal payables run in the ordinary course,
6 exclude comp, right, whatever is normally paid
7 for compensation on a weekly or monthly basis,
8 take a snapshot of a normal payable cycle, all
9 right, so at any given time you have a certainly
10 amount of payables outstanding, not knowing when
11 under every contract a payment was going to be
12 made, and not knowing they were all monthly,
13 necessarily, but we assumed that a lot of them
14 would be paid normally, you know, on a monthly
15 cycle, and provide us with an overall number
16 that would be a proxy for what the payments
17 under, you know, if you were assuming many of
18 those contracts, what those payments estimated
19 could be.

20 So that this was an intent. And we
21 told Barclays we couldn't provide them with the
22 specifics that they were looking for, but we
23 would try to get them an estimate of, for them
24 and ourselves, obviously, an estimate of what we
25 thought the amount would be that could be paid

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2 if they were going to have to assume all of
3 these contracts.

4 Q. Who did that work?

5 A. I don't know. George -- George went
6 off and started talking to people in the finance
7 area. And there were many people that were
8 working around, obviously around the clock on
9 these things trying to pull this information
10 together for us. I don't know who actually did
11 the work.

12 Q. Is George the person that you tasked
13 to get the number?

14 A. George is the person who I tasked to,
15 you know, to get people to provide us with those
16 numbers.

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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2 [REDACTED]
3 [REDACTED]

4 Q. You testified previously that on,
5 maybe it was Thursday evening or at some point
6 later in the week, that you thought that there
7 was some concern about Barclays going through
8 with the deal, okay? I don't know what language
9 you used. Tell me what the -- was there
10 anything that Barclays said to anyone at Lehman
11 that caused that concern, or was it just a
12 general anxiety about wanting to get something
13 done?

14 A. No, it was really a comment that was
15 made to me by Jim Seery, who said something like
16 there's a big, I think his words were "shit
17 show" going on between JPMorgan and Barclays
18 around the repo and that, you know, JPMorgan was
19 screwing around doing something that Jim
20 characterized, as I said, as something that was
21 not positive, and that, you know, that was
22 putting the deal potentially at risk. That was,
23 I would say, the nature of what concerned me.
24 So that was it.
25 [REDACTED]

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9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 Q. Let me show you again what has been
13 marked as Exhibit 19 and draw your attention to
14 the cure amount about which you testified
15 previously --

16 A. Yes.

17 Q. -- reflected on this schedule as
18 being, as I read it, 2.25 billion. Do you see
19 that?

20 A. Yeah, I do see that.

21 Q. Do you recall that number ever
22 changing in the course of the week?

23 A. I don't remember -- I don't really
24 remember how that 2.25 got in there. I
25 personally have a better recollection of a \$1.5

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2 billion number that we were using for -- and
3 obviously it was an estimate, right?

4 So these were all, at the end of the
5 day, as I explained to you earlier, we were
6 trying to do our best at the time to provide
7 Barclays, principally, with a perspective on
8 what it might cost them to take over all of the
9 contracts that could be subject to the
10 assumption of the assignment. And so, as I said
11 earlier, we were trying to come up with an
12 estimate of what that number was.

13 My recollection was we -- I used, in
14 my own head, a billion-five, and the reason I
15 remember that is that when we were negotiating
16 the breakup fee, we were -- I was thinking
17 about -- and I had negotiated the breakup fee in
18 the transaction relating to the stalking horse
19 bid -- I remember thinking, okay, we can do 3,
20 typically 3 percent of the deal. Barclays asked
21 for a lot more going in. They asked -- I think
22 Victor Lewkow told me something like \$250
23 million or something like that. It was big
24 number. And I told him we weren't going to do
25 that, that in my mind that, you know, there

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2 was -- that that could be perceived as, you
3 know, chilling the bidding. I didn't want any
4 perception of anybody feeling that they couldn't
5 make a bid.

6 Obviously, you know, I said that 3
7 percent was a normal -- he was not a bankruptcy
8 lawyer, by the way. So I was -- I wouldn't say
9 I was educating him because he obviously was a
10 smart guy, but I was explaining to him in my
11 experience what an acceptable number would be
12 from the court's perspective, and at the time my
13 recollection is we were looking at \$250 million
14 for goodwill, it was around a million to a
15 million-450 for the buildings, which ultimately,
16 you know, that was our estimate, we didn't have
17 our desktop appraisals yet --

18 MR. STERN: Billion.

19 A. Billion, yeah, sorry.

20 1.45 billion. That was a
21 billion-seven. We added this estimate for cure
22 costs of a billion and a half, that got us to
23 3.2 billion, and we told them that the \$100
24 million breakup fee would be approximately 3
25 percent and that's what we would be willing to

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do, plus some expense reimbursement, I think

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maybe 25 million.

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20 Q. Now, in that conversation on late
21 Monday night or early Tuesday morning, you say
22 you used a number for cure of 1.5?

23 A. Yes. My recollection for the purposes
24 of calculating this \$100 million.

25 Q. I understand. Do you have any

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2 recollection where you got that number and why
3 it's different than number that's in Exhibit 19?

4 A. The only recollection I have is that,
5 as I said, I had asked people to go back and get
6 me a proxy for what that month, you know, call
7 it snapshot of a monthly payables number would
8 be off of let's call them trade payables, which
9 would really cover contracts that you're paying
10 under, excluding employee liabilities and things
11 like that.

12 Somebody probably in my team who was
13 tasked with that -- it could have been George
14 Mack, it could have been somebody else, Dan
15 Flores -- I'm sure came back to me and said, I'm
16 being told that rough cut around a billion-five,
17 but it was a true estimate, we never told
18 Barclays it was anything other than an estimate,
19 and we told them it could be higher, it could be
20 lower. And it was, at the end of the day, it
21 was always going to be based on what contracts
22 they ultimately assumed. So, you know, which we
23 didn't have any clear view on other than the
24 fact that we thought they were going to need a
25 good chunk of the contracts to operate the firm.